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ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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CHAIRMAN

April 24, 2007

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The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Dear Chairman Martin:

Over the past few years it has become exceedingly apparent that the amount of competition in video, high speed Internet, and voice services is growing. Pro-competition policies are clearly working. The correct regulatory response, therefore, is to ensure free markets flourish, not to layer on additional, unnecessary, and burdensome regulations. We are disturbed that with respect to the cable industry, you appear to be making proposals that are leading the Commission precisely down the road of intrusive regulation when it is least justified.

For example, despite an earlier FCC staff report that *a la carte* regulations would reduce consumer choice and raise subscriber rates, as well as general rejection of the idea by economists and on Capitol Hill, you continue to advocate such regulation of cable operators' business models. You have advocated multicast must-carry, even though the FCC has already rejected it on more than one occasion because of policy and First Amendment concerns. You have expressed continued support for the integrated set-top box ban, which imposes additional costs without providing any benefits to consumers who are content to use a cable operator's set-top box. That point has repeatedly been made in wavier requests, a number of which the FCC Media Bureau has denied, but which the full Commission has yet to address.

While some of the statutory framework applicable to cable television is rooted in Communications Act provisions adopted in 1992 and 1996, when cable share of the multichannel video marketplace was much greater, the Commission has the authority—and the duty—to implement those provisions in a manner that reflects actual market conditions. Market conditions today bear little resemblance to those of 1992. According to FCC data, cable served 95.95 percent of the multichannel video programming distribution market in 1992. That dropped to 88.69 percent by 1996, and to 69.41 percent by 2005. By contrast, direct broadcast satellite share of MVPD homes has grown from non-existent in 1992 to 4.92 percent in 1996 to 27.72 percent in 2005. In light of this data, one would think that the need

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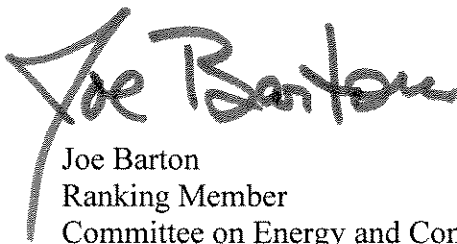
for cable regulation should be decreasing, not increasing. Recent FCC actions finding effective competition to cable in many areas of the country, with other effective competition petitions still pending, further support the conclusion that the need for regulation should be decreasing. This makes all the more peculiar some of your statements calling for increased regulation of the cable industry.

Moreover, thanks to your good efforts on broadband deregulation and video franchise reform, large telephone providers are getting into the video game. And yet, that very video franchise reform order did not extend the same deregulation to existing cable operators, handicapping them as compared to their competitors until consideration of the issue in an item still scheduled for the future. Our hope is that you address that issue shortly, and that you grant deregulatory parity so that all cable operators, large and small, can operate on a fair playing field in the highly competitive video market, which as we speak is also seeing entry by wireless providers and Internet streaming services.

We raised these concerns at the March 14, 2007, FCC oversight hearing. Yet since then, you continue to push *a la carte*. There are reports that you are contemplating re-imposing a 30-percent horizontal cable ownership cap despite a 2001 federal appeals court decision finding that the FCC failed to justify that very number. You appear to be once again trying to resurrect multicast must-carry by combining it with a leasing proposal. You also are reported to be circulating a dual carriage proposal, which the FCC has also rejected before on multiple occasions. Furthermore, reports indicate that the dual carriage proposal also implicates the deployment of cable set-top boxes into consumers' homes. That is something that not all consumers want, and a proposition made more expensive by the integrated set-top box ban, as discussed above. There are also suggestions that the dual carriage proposal may include tentative conclusions. Our hope is that if there must be yet another item seeking comments on dual carriage, it would do so in a neutral fashion, without suggesting conclusions in advance, and would consider a variety of options, as well as the implications of the integrated set-top box ban.

We respectfully request that you take our concerns into account as you continue your leadership at the FCC.

Sincerely,



Joe Barton
Ranking Member
Committee on Energy and Commerce



Fred Upton
Ranking Member
Committee on Telecommunications and the Internet

cc: Commissioner Michael J. Copps
Commissioner Jonathan Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert M. McDowell